

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10070 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BUDHIYABHAI KANWARJI PATEL

Versus

NAVSARI MUNICIPALITY

Appearance:

MR RAJNI H MEHTA for Petitioners

MR MC SHAH for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/09/96

ORAL JUDGEMENT

This Special Civil Application has been filed by 13 persons. Their say is that they have been doing business after obtaining lease from the Municipality for last more than 15 years. In the year 1984, the respondent wanted to evict the petitioners, and therefore, they filed 3 petitions in this Court. The said Special Civil Applications were disposed of by order of this court dated 25.4.1995 which reads as follows:

"The learned Counsel for the petitioner submits that the petitioner seeks permission to withdraw this petition with a view to make representation to the municipality. If such representation is made, it will be considered sympathetically by the Municipality and decide in accordance with law. Petition is rejected as withdrawn. Rule discharged with no order as to costs. Interim relief stands vacated."

In pursuance of the directions of this Court, the petitioner made a representation to the respondent-Municipality. However, the representation was rejected by Resolution dated 4.11.1995 of the Executive Committee of the Municipality. The present petitioners have challenged the said Resolution dated 4.11.1995 in this Special Civil Application.

2. This Court by order dated 24.11.1995 issued notice for the limited purpose of indication by the respondent-Municipality as to what alternative arrangement it proposed to make in respect of the petitioner, if they were having, in the past, shops as alleged by him. Again, when the matter came up before this Court on 31.1.1996, the learned Advocate for the petitioners did not press the prayer contained in para 6(A) against demolition of their stall and accordingly the prayer in that respect was permitted to be deleted. The petitioners, however, confined the petition for a direction to the respondent-Municipality to frame a scheme for the purpose of rehabilitation in such cases. By way of interim relief, the respondent Municipality was directed to consider the question of preparation of scheme for rehabilitation on the line on which it was done in the case of Anupam Rekhdi Cabin Association vs. Jamnagar Municipal Corporation, reported in 1995(1)GLH 588 as may be found feasible and a draft of such scheme that may be prepared, may be placed on record. The case was adjourned to 15.3.1996. It may be stated that prior to the aforesaid order, the petitioner had suggested certain sites for alternative accommodation. The respondent-Municipality filed detailed affidavit dated 15.1.1996 stating that those sites suggested by the petitioners are not available for allotment to the petitioners.

3. Learned Advocate appearing for the respondent Municipality, Navsari has placed on record a Resolution dated 13.3.1996 stating that it is not feasible to frame any scheme in line suggested in the case of Anupan Rekhdi

(supra) It is also stated that the case of the petitioners were considered sympathetically but the real difficulty of the Navsari Municipality is that there is no space where the petitioners could be accommodated.

4. Mr R H Mehta, learned Advocate for the petitioners has referred to the decision of this Court in the case of Anupam Rekhdhi (supra). He has invited my attention to para 9 of the judgment. I have gone through the aforesaid judgment. It does not in any way advance the case of the petitioners. It is settled that public streets are made for the use of general public and are not laid to facilitate the carrying on of private business. The Apex Court in the case of Bombay Hawkers' Union v. Bombay Municipal Corporation, reported in 1985 (3) SCC 528 has held that if hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the centre of busy thoroughfares thereby paralysing all civic life.

5. In view of the above, in my view there is no merit in this Special Civil Application. It is contended by Mr R H Mehta, learned Advocate for the petitioner that since the petitioners are in possession over the land for more than 15 years, some time may be given to them to vacate the premises. This prayer is being opposed by the learned Advocate for the respondent-Municipality. However, considering the facts of the case, ends of justice would meet, if the petitioners are given time to vacate the premises which they unauthorisedly occupied, by the end of this year i.e. upto 31.12.1996.

6. It is next contended by Mr R H Mehta, learned Advocate that the Municipality has even refused to provide place in the hawking zone for moving rekdi. Learned Advocate for the respondent submits that this statement is incorrect. If any of the petitioners make application for a licence, the same should be considered and as far as possible, place should be provided to the petitioner for moving the rekdi. This statement is made under instruction of the Acting Chief Officer, Rajesh Gupta who is present in the Court. In view of this statement, the grievance of the petitioner does not survive. The learned Advocate for the petitioners further submits that they apprehend that the Municipality will allot the subject land to other persons because of political reasons. This apprehension appears to be baseless as the Municipality will not be allotting the same as it is part of the public street.

7. In view of the aforesaid, while rejecting this Special Civil Application following directions are given.

(1) that petitioners shall not be dispossessed till 31.12.1996, provided -

(i) that each of the petitioners furnishes undertaking before this Court within a period of 30 days from today stating that they are in possession of the subject land and that they will not part with the same and peacefully handover the vacant possession to the respondent-Municipality on or before 31.12.1996.

(ii) that if all or any of the petitioners apply for licence for moving Rekdi in hawking zone, the same shall be considered in accordance with law and the scheme and they will be accommodated therein.

This Special Civil Application is accordingly rejected.
Notice discharged. No order as to costs.

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